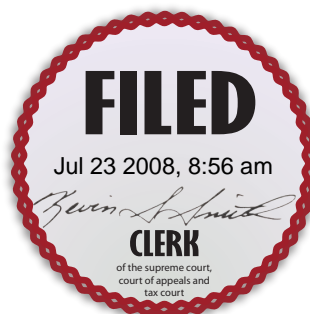


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



PRO SE APPELLANT:

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**IN THE
COURT OF APPEALS OF INDIANA**

JOSHUA WEATHERS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 37A03-0803-CR-89

APPEAL FROM THE JASPER CIRCUIT COURT
The Honorable Robert W. Thacker, Judge
Cause No. 37C01-0208-FB-361

July 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Joshua Weathers, *pro se*, appeals the trial court's denial of his motion for jail time credit. Because Weathers' motion for jail time credit is essentially a motion to correct erroneous sentence and because this motion does not establish facial error and instead requires an analysis of matters beyond the face of the sentencing judgment, we affirm.

Facts and Procedural History

On August 7, 2002, Jasper County authorities arrested Weathers, and on August 9, 2002, the State charged him with aiding in armed robbery as a Class B felony. On September 20, 2002, Weathers was transported to Newton County for "temporary housing."¹ Appellant's App. p. 1. On February 7, 2003, Weathers pled guilty to aiding in armed robbery as a Class B felony.

At some point, Weathers was convicted of a separate offense of armed robbery as a Class B felony in Newton County and sentenced to ten years, which was to be served consecutive to whatever sentence he received in Jasper County. According to an uncertified, one-page transcript from the Newton County case included in the appendix in this case, Weathers was not awarded credit time at the time of sentencing for the Newton County case because he would presumably be receiving it in this case. *Id.* at 16. On March 10, 2003, the trial court in this case sentenced Weathers to ten years for aiding in armed robbery, to be served consecutive to his ten-year sentence in Newton County.

¹ It is unclear how long Weathers was housed in Newton County, but a careful reading of Weathers' brief appears to indicate that Weathers was not returned to Jasper County until sentencing. *See* Appellant's Br. p. 6 ("In the case at hand, Weathers was arrested for the Jasper County charge of Armed Robbery, and subsequently a hold was placed on him by Newton County, he was then transported to Newton County where the matter was resolved, and then returned to Jasper County for sentencing.").

In March 2004, Weathers, *pro se*, filed a “Petition to Grant Credit Time” in this case, which the trial court denied. In August 2006, Weathers, *pro se*, filed a “Motion for Jail Time Credit.” On September 5, 2006, the trial court granted this motion and, according to the CCS, awarded him “credit for 49 days, together with good time credit resulting therefrom.”² *Id.* at 3. The court also issued an amended abstract of judgment, which reflects that Weathers was confined “49 days” “prior to sentencing.” *See id.* at 15. In October 2007, Weathers, *pro se*, filed a “Mot[i]on for Jail Time Credit.” The sitting judge recused himself and appointed Special Judge Robert Thacker. Judge Thacker then denied the motion, stating: “The Court finds that the Court has previously acted on Defendant’s *pro se* motion for jail time credit. The Court finds that on September 5, 2006, the Court entered an Order granting Defendant’s previous motion for jail time credit. See Order, together with Amended Abstract of judgment.” *Id.* at 14. Weathers now appeals the denial of his third motion for jail time credit.

Discussion and Decision

Weathers contends that he is entitled to additional credit time for the time he awaited sentencing in the Jasper County case while he was housed in the Newton County jail. Specifically, he argues that he was incarcerated for the Jasper County charge from his arrest on August 7, 2002, until his sentencing on March 10, 2003, which amounts to 216 days, but the trial court only awarded him 49 days of credit time. Therefore, he asserts that he is entitled to an additional 167 days of pre-sentencing credit.

² It is unclear whether the trial court issued an order. If the court did, Weathers did not include it in his appendix. Therefore, we do not know how the trial court came up with forty-nine days.

“Every Indiana prisoner is placed into a ‘class’ for the purpose of earning credit time.” *Neff v. State*, 888 N.E.2d 1249, 1250 (Ind. 2008). Inmates in Class I earn one day of credit time for every day imprisoned. *Id.* (citing Ind. Code § 35-50-6-3). The trial court determines credit time at the time of sentencing, *Robinson v. State*, 805 N.E.2d 783, 792 (Ind. 2004), and the trial court’s sentencing order, among other information, must include “the amount of credit, including credit time earned, for time spent in confinement before sentencing.” *Neff*, 888 N.E.2d at 1250 (quoting Ind. Code § 35-38-3-2(b)(4)).

Determination of a defendant’s pretrial credit is dependent upon (1) pretrial confinement and (2) the pretrial confinement being a result of the criminal charge for which the sentence is being imposed. *Payne v. State*, 838 N.E.2d 503, 510 (Ind. Ct. App. 2005), *trans. denied*. When an individual is in custody awaiting trial on more than one charge and is sentenced to concurrent terms, he is entitled to receive credit time against each separate charge. *Id.* If, however, a defendant receives consecutive terms, he is only allowed credit against the aggregate of the terms. *Id.*

Weathers claims that he is entitled to an additional 167 days of credit while awaiting sentencing in the Jasper County case while he was housed in the Newton County jail. We note that Weathers did not present this pre-sentencing credit argument by way of a petition for post-conviction relief. Rather, he filed motions for jail time credit in which he essentially moved to correct what he contended was an erroneous sentence. *Robinson*, and more recently, *Neff* instruct that motions to correct an erroneous sentence are only proper when used to correct sentencing errors that are clear from the

face of the judgment. *Neff*, 888 N.E.2d at 1251; *Robinson*, 805 N.E.2d at 787. Weathers does not establish any facial error in his sentencing judgment. Consideration of Weathers' contentions requires an analysis of matters beyond the face of the sentencing judgment, including a proper calculation of how many days he spent in pre-sentencing confinement in both Jasper and Newton counties and whether the trial court in Newton County has subsequently awarded him any jail time credit. Pursuant to *Robinson*, these considerations may not be undertaken on a motion to correct erroneous sentence. Accordingly, the trial court did not err in denying Weathers' motion.

Affirmed.

MAY, J., and MATHIAS, J., concur.